

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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UNITED STATES OF AMERICA,

Case No. 14-CR-0289 (4) (SRN/BRT)

Plaintiff,

v.

ORDER

ELEUTERIO IZAZAGA-PASCACIO,

Defendant.

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Defendant Eleuterio Izazaga-Pascacio requests copies of the transcript of a hearing conducted before the Court during his underlying criminal proceedings, in order to pursue an administrative grievance against his former defense counsel. *See* ECF No. 602. The motion must be denied.

As an initial matter, Izazaga requests that the transcript be prepared pursuant to Fed. R. App. P. 10(b)(1). But Izazaga cannot invoke Rule 10(b)(1) here. First, Rule 10(b)(1) governs the *duty* of an appellant to order a transcript for the benefit of a court of appeals, not the *right* of a litigant to procure a transcript free of charge from the court. *See also* Fed. R. App. P. 10(b)(4) (“At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.”). Second, Izazaga is not an appellant at all. This matter is not on appeal; indeed, nothing is pending in this matter apart from Izazaga’s request for a transcript. Rule 10(b)(1) therefore has no relevance here.

A more pertinent provision to invoke would be 28 U.S.C. § 753(f), which states in relevant part that

Fees for transcripts furnished in criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. 3006A), or in habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis, shall be paid by the United States out of moneys appropriated for those purposes. Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question).

Unlike Rule 10(b)(1), § 753(f) at least allows for the provision of transcripts at no cost to an indigent litigant. Still, § 753(f) allows for the provision of free transcripts only in relation to judicial proceedings, and only where the issue to be litigated is deemed to be not frivolous by the Court. *See, e.g., United States v. Seelye*, No. 07-CR-0377 (ADM/RLE), 2014 WL 639867, at \*3 (D. Minn. Feb. 19, 2014). Izazaga acknowledges that the transcript is not needed to pursue habeas corpus relief, relief under 28 U.S.C. § 2255, or any other judicial remedy. Moreover, this Court cannot say from the scant record before it that the issue being pursued by Izazaga is not frivolous. The Court therefore cannot authorize free transcripts to Izazaga under § 753(f), either.

Accordingly, Izazaga's motion for a transcript is denied. His motion for a status update [ECF No. 611] is denied as moot.

#### ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Defendant Eleuterio Izazaga-Pascacio's motion for transcripts [ECF No. 602] is DENIED.
2. Izazaga's motion for a status update [ECF No. 611] is DENIED AS MOOT.

Dated: December 20, 2017

s/Susan Richard Nelson  
SUSAN RICHARD NELSON  
United States District Judge